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INTERVIEW

BLACK LIVES MATTER—A DISCUSSION WITH TWO CIVIL RIGHTS ATTORNEYS

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A MISSION OF INCLUSION AND EMPOWERMENT

Dr. Martin Luther King Jr. once said, “Human progress is neither automatic nor inevitable . . . every step towards the goal of justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of dedicated individuals.”³ The Black Lives Matter (“BLM”) movement has a formal presence in the United States, the United Kingdom, and Canada.⁴ The founders’ outrage at the acquittal of George Zimmerman, who they believed murdered Trayvon Martin in 2013, fueled BLM’s mission to empower Black communities to intervene in the violence inflicted on those communities by both the State and vigilantes and to eradicate white supremacy.⁵ Further, BLM goals include “combating

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¹ Zoom interview by Executive Articles Editor Justin Trimachi with Walter Riley (Dec. 7, 2020).

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² Zoom interview by Executive Articles Editor Justin Trimachi with Dewitt M. Lacy (Nov. 30, 2020).

³ *Reflections on Martin Luther King Jr.’s The Montgomery Story*, ALLIANCE FOR STRONG FAMILIES AND COMMUNITIES, <https://alliance1.org/web/news/2018/jan/reflections-martin-luther-king-jr-montgomery-story.aspx> (last visited Feb. 15, 2021).

⁴ *About*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> (last visited Feb. 13, 2021).

⁵ *Id.*

and countering acts of violence, creating space for Black imagination and innovation, and centering Black joy to win immediate improvements.”⁶

The movement seeks to center on those who have been marginalized by previous Black liberation movements. BLM affirms Black queer and trans individuals’ lives and seeks to move Black communities beyond “narrow nationalism.”⁷ It also works to create a world where Black lives are not “systematically targeted for demise” and affirm humanity in all of those facing “deadly oppression.” I reached out to two Black civil rights attorneys to give me their perspective on BLM. Both are alumni of Golden Gate University School of Law. The first, Walter Riley, graduated in 1968 and was recommended by Professor Leslie Rose,⁸ and the second, Dewitt M. Lacy, spoke in my Criminal Procedure class about his work as a civil rights attorney.

LIFTING UP OTHERS, FROM THE JIM CROW SOUTH TO THE GOLDEN STATE

Walter Riley grew up in a large family in Durham, North Carolina, when Jim Crow laws were still in force. He learned early from his parents how the world was different for Black people in the South than their white counterparts. This knowledge, combined with experiencing the stories of the brutal lynching of Mack Parker⁹ and Emmet Till,¹⁰ fueled his desire to get involved as a teenager in the civil rights movement in the late 1950s and early 1960s. He had the opportunity to work with such influential leaders as Floyd McKissick¹¹ and often interacted with the movement’s lawyers. Mr. Riley’s law school journey took him on several unforeseen turns, such as being a union organizer as a bus driver and being part of a rent strike in Chicago and Detroit. Upon returning to California in 1977, he enrolled at Golden Gate University School of Law with the desire to engage in social justice in the area of housing law.

Dewitt M. Lacy grew up in California in a family of modest means. For over a decade, Mr. Lacy has successfully prosecuted wrongful death

⁶ *Id.*

⁷ *Id.*

⁸ *Faculty: Leslie Rose*, GGU.EDU, <https://www.ggu.edu/shared-content/faculty/bio/leslie-rose>, (last visited Feb. 13, 2021).

⁹ *Lynching of Mack Charles Parker*, MISSISSIPPI CIVIL RIGHTS PROJECT, <https://mscivilrightsproject.org/pearl-river/event-pearl-river/lynching-of-mack-charles-parker/> (last visited Jan. 4, 2020).

¹⁰ *Emmett Till Is Murdered*, HISTORY.COM, <https://www.history.com/this-day-in-history/the-death-of-emmett-till>, (last visited Jan. 4, 2020).

¹¹ Floyd McKissick was an influential civil rights leader and a contemporary of Dr. Martin Luther King, Jr. *McKissick, Floyd Bixler*, STANFORD UNIVERSITY, THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE, <https://kinginstitute.stanford.edu/encyclopedia/mckissick-floyd-bixler> (last visited Feb. 3, 2021).

actions and civil rights violations against various municipalities. After attending Golden Gate, Mr. Lacy first practiced in the area of corporate law. However, he soon found this work unsatisfying and went to work in the San Francisco District Attorney's office under Kamala Harris. Mr. Lacy cites his experience growing up as a Black man in America as a significant influence on his ultimate decision to practice as a civil rights attorney. "You see some stuff that a lot of people don't see, and you experience things in a different way than many other Americans." His heightened awareness of the law's potentially unfair application against uneducated people paved the way to his current practice.

WHY THE *TRUTH* WILL SET US FREE

Mr. Riley and Mr. Lacy expressed their viewpoint on several topics, such as the myths surrounding the Black Lives Matter movement. They discussed significant impediments, how the legal community and law schools could support BLM and similar organizations, and how BLM compares to previous civil rights movements. Both agree that irresponsible and dangerous mistruths exist that distort how BLM's purposes and goals are viewed by the general public.

The first myth debunked was that BLM exists solely to get out the vote for Democratic candidates. Mr. Lacy pointed out that each particular regional group of BLM activists' goals can vary slightly by region but does not have the sole focus of getting the vote out for the Democratic party. Mr. Riley discussed that the Black Lives Matter primary focus in the Bay Area is geared more towards local grassroots efforts, such as housing, welfare rights, police reform, and other social issues. Both agree that one focus of the movement is to educate people about the importance of participating in the democratic process. This education includes ways to improve police training.

Another myth surrounding BLM is that it calls for the police to be defunded entirely, resulting in a society with no police protection. Mr. Riley believes that the focus lies more on a reprioritization of funds. He would shift funds from recent police departments' militarization to focus more on proper training concerning healthcare, youth education and development, and correctly responding to those in crisis. Mr. Lacy agrees that completely defunding the police is not the right focus and thinks that this idea is a minority opinion within the movement. He would also spend money to retrain officers to interact with historically marginalized communities, specifically Black and Hispanic ones, in a more humane and understanding way. Specifically, he highlighted retraining officers to be more sensitive to those in the community's mental health issues. Also,

as a first step, Lacy supports mandating implicit bias¹² training for officers, which is used to identify and help overcome unconscious racist thoughts and reactions.

BLM seeks to lift those who are marginalized by society and even by previous civil rights movements.¹³ Mr. Riley views the myth that BLM is only for the benefit of “queers, gay, transgender folks who are immoral” as very dangerous to the movement. He expressed that this view makes it easy for Black people and other groups of color who are Christian to dismiss BLM. Mr. Riley feels this anti-LGBTQ+ myth undermines the goals of the movement. Similarly, Mr. Lacy is troubled by the myth that BLM is an anarchist movement. He acknowledges that a small portion of those who identify with BLM may want anarchy, but not the group as a whole. Both agree that another dangerous myth is that BLM is an “anti-white” movement. Mr. Lacy points out that many of the movement’s goals are “in lock step” with many of the concerns of rural white Americans.

When discussing this anti-white myth, Mr. Riley poignantly addressed the perceived differences between “Black Lives Matter,” “All Lives Matter,” and “Blue Lives Matter.” He stated that the movement did not seek to negate the truth that “All Lives Matter.” “Black Lives Matter” is a statement meant to bring attention to the fact that Black lives have not mattered for far too long due to a disparity in access to education, healthcare, and fairness in the criminal justice system. Mr. Riley stated that BLM seeks to empower Black people by lifting them to a place of equality, and “Black Lives Matter” is a statement to the world to pay attention and address the genuine injustices that exist.

Mr. Lacy believes that education is crucial to addressing the gap between groups that espouse different versions of “X Lives Matter,” but it is not the sole remedy. He hopes that the racial dichotomy in America would be addressed from the top down by elected officials showing a willingness to have difficult conversations. He feels they must address the “ills that we have in our social makeup,” such as police brutality in historically marginalized communities and income inequality, by seeking to understand why those difficulties exist rather than engaging in superficial analysis. Mr. Lacy is particularly encouraged that the younger generation’s intolerance for the status quo will help resolve these issues by challenging outdated patriarchal and racist systems and stereotypes. When I introduced this topic, the conversation shifted from myths to hard truths in current law that impede change, specifically BLM’s goals.

¹² *Implicit Bias*, NATIONAL INSTITUTE FOR BUILDING COMMUNITY TRUST & JUSTICE, <https://trustandjustice.org/resources/intervention/implicit-bias> (last visited Feb. 1, 2021).

¹³ *About*, *supra* note 4.

JUSTICE IS NOT COLORBLIND

Both attorneys agree that reforming the criminal justice system is necessary to further BLM's central tenets of empowerment and inclusion. Mr. Riley points out how the community has suffered because of the stigma that follows many Black people after being processed through the criminal justice system. Once someone wears a "criminal jacket," he or she can find it more challenging to move forward in society. While Mr. Riley believes that civil rights suits are helpful, he feels more emphasis and focus is needed on legislative agendas starting with local city councils up to the federal level to change current laws and penalties. Mr. Lacy believes that one significant difficulty the movement faces is police brutality and the officers who are often protected under the qualified immunity doctrine. Qualified immunity protects police officers from lawsuits unless they have violated the victim's "clearly established" statutory or constitutional rights.¹⁴ Courts will apply the law in effect at the time of the violation, rather than the law in effect when the court considers the case.¹⁵ The immunity is not granted against paying damages, but rather the cost of a trial.¹⁶ Therefore, if qualified immunity is granted, the defendant officer is usually granted summary judgment,¹⁷ and the case is dismissed.

Mr. Lacy views this issue as particularly restricting. He explained that courts apply qualified immunity when considering cases where officers use excessive force. Officers are granted qualified immunity and shielded from facing any liability for their actions when the facts of an incident do not exist in settled case law. Mr. Lacy stated that officers have no incentive to avoid acting egregiously. He discussed how this lapse delays justice for many, specifically concerning the use of Tasers by officers in the early 2010s. Due to a lack of court rulings defining excessive force with Tasers, many victims could not obtain compensation. Even though these victims were either shocked too long or more times than was necessary, not enough rulings existed that put the officers on notice that their actions were constitutional violations.

Mr. Lacy believes that two effects of this doctrine exist that may not be obvious. First, it essentially forces Black communities to subsidize incorrect behavior because their tax dollars purchase the insurance policies that law enforcement agencies rely on to pay damages. Second, by

¹⁴ *Qualified Immunity*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/qualified_immunity (last visited Jan. 10, 2020).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Summary Judgment*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/rules/frcp/rule_56 (last visited Feb. 13, 2020).

allowing this doctrine to continue, the courts are indirectly encouraging officers who seek to brutalize minorities to find creative ways to do so that will enable them to raise the shield of qualified immunity to succeed on a summary judgment motion. When a case is dismissed in this way, there is no ruling on whether a constitutional violation occurred to which future plaintiffs can refer. I then asked both attorneys how law schools, law students, and lawyers who do not practice civil rights law can use their platforms to help both BLM and the larger struggle for equality.

LEVERAGING THE LAW TO FURTHER THE GOALS OF BLM

Lawyers who do not practice civil rights law can still use their skills to assist the movement. Mr. Lacy pointed out that amicus briefs, filed by non-parties to a suit seeking to influence the court's ultimate ruling,¹⁸ are useful to further both BLM and civil rights law because they can give the court a fresh, neutral perspective on an issue before it. In addition to offering their legal services, attorneys can get involved by volunteering or attending city council meetings to further the movement's goals and agendas. Mr. Lacy highlighted that lawyers also wield political leverage because they generally have more financial resources available to pressure elected officials to make a change. Mr. Riley agrees that lawyers have a responsibility to leverage the respect and influence that comes with a law degree to help foster change and social justice in their local communities. When lawyers are directly involved in civil rights suits, he believes it is essential not to adopt a paternalistic mindset.¹⁹ Instead, attorneys should view themselves as part of the struggle and part of the group seeking change. An inability to exhibit the empathy that Mr. Riley calls for hinders law students from realizing how they can help make a change, according to Mr. Lacy.

Mr. Lacy challenges law students to educate themselves about the world outside their zone as much as possible. He attributes much of the problem to the lack of diversity in law school and other graduate programs. Mr. Lacy also believes that many law schools should diversify their staff to present varied viewpoints to the student body. He encourages law students to volunteer in different organizations and be involved in democracy, not just sit on the sidelines and watch. Mr. Riley feels that law schools are too focused on arguing both sides, resulting in a dilution

¹⁸ *Amicus Curiae*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/amicus_curiae (last updated Jun. 2017).

¹⁹ One of BLM's core values is to empower those who are marginalized and ignored to determine their own destiny in their communities. See *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/herstory/> (last visited Feb. 13, 2020).

of what matters. Without having conviction and discussing hard truths in law school, Mr. Riley believes law students will be ill-prepared for the future and lack the necessary strength behind their words and actions to convince others. He then noted that many others have this conviction and use it to further anti-LGBTQ+, racist, and oppressive legal agendas against the BLM movement. Both Mr. Lacy and Mr. Riley see BLM as a legitimate movement and not just a moment in civil rights history.

Mr. Lacy believes BLM presents a sharp contrast with previous short-lived reactions to civil rights violations that faded from the national consciousness and so failed to have the same impact. He believes that so many younger people's willingness to challenge societal norms speaks to BLM's longevity as a force for change. He hopes that people rise to change some of the other contributing factors to the current movement, such as inequality in income, healthcare, and education. Mr. Riley contrasts BLM by noting that it enjoys much more support from national leaders and leaders that came before. He speaks of the difficulty the 1960s movement faced because the previous generations criticized their actions as too radical. Mr. Riley noted that there are more organizations for change in the Bay Area than existed in the civil rights era. He is very encouraged by the national and international efforts to effect change in many nations, not just the United States. Both attorneys agreed that BLM is a significant next chapter in fighting for justice and equality for all people. BLM strives to be the force for change missing for years in the United States and the world.

FIGHTING FOR THE EQUALITY OF ALL

BLM distinguishes itself from other Black liberation movements by purposefully including those previously ignored.²⁰ BLM affirms the lives of Black “queer and trans folks, disabled folks, undocumented folks, women and all Black lives along the gender spectrum.”²¹ Mr. Lacy and Mr. Riley have contributed to advancing Black civil rights in the United States, but they are only two pieces of the larger puzzle. The founders of BLM, Patrisse Cullors, Alicia Garza, and Opal Tometi, strive every day to ensure that *all* Black Lives are empowered.²² Without the passion and inspiration embodied in the three women, others may have stayed silent instead of standing up and fighting for their rights.

²⁰ *About*, *supra* note 4.

²¹ *About*, *supra* note 4.

²² *Herstory*, *supra* note 19.

BLM is approaching seven years of fighting for equality and justice for Black people by liberating them from oppression.²³ In a letter on the sixth anniversary of the movement, Ms. Cullors made a passionate statement that perfectly captures BLM's essence: "We have fought like hell for our freedom and will continue to fight like hell. Because we deserve more than what we have been given. Because we deserve the healing and the transformation and most importantly, we deserve to be free."²⁴ This statement embodies the ideals of Coretta Scott King,²⁵ who pronounced, "Struggle is a never-ending process. Freedom is never really won; you earn and win it in every generation."²⁶ Cullors, Garza, Tometi, and others have acted on Mrs. King's words and struggle to ensure that all Black Lives are treated with equality, dignity, and freedom.

²³ *About, supra* note 4.

²⁴ *6 YEARS STRONG*, BLACK LIVES MATTER, <https://blacklivesmatter.com/six-years-strong/> (last visited Feb. 3, 2021).

²⁵ Coretta Scott King was a civil rights activist and Dr. Martin Luther King's wife. *Coretta Scott King*, THE KING CENTER, <https://thekingcenter.org/about-tkc/about-mrs-king/> (last visited Feb. 15, 2021).

²⁶ 109 CONG. REC. 119 (2006), CONGRESS.GOV, <https://www.congress.gov/109/crec/2006/02/01/CREC-2006-02-01-pt1-PgH115-5.pdf>.